IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 34324 of 2007(J)

PETITIONER:

M/S.MOON CHEMICALS,
NADUVILAKKARA, THEVALAKKARA, KOLLAM,
REP. BY ITS MANAGER-S.MARAN.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS:

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1. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOLLAM.

2. THE ASSISTANT COMMISSIONER (IV),
COMMERCIAL TAXES, SPECIAL CIRCLE, KOLLAM.

BY GOVERNMENT PLEADER SRI. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/11/2007, ALONG WITH W.P.(C).34318/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J

W.P.(C)s. 34324/2007 & 34318/2007

Dated this the 21st day of November, 2007

JUDGMENT

In W.P.(C).34318/2007, it is stated that against Ext.P1 order of penalty, petitioner filed Ext.P2 appeal and in the said appeal, Ext.P4 order of stay has been passed by the appellate authority requiring the petitioner to remit 50% of the amount and furnish security for the balance amount. In so far as W.P.(C).34324/2007 is concerned, there also by Ext.P4, stay has been granted in Ext.P2 appeal which has filed against Ext.P1 order of assessment. Stay granted was on condition that the petitioner remitting 50% of the tax amount and furnish security for the balance amount.

2. The claim of the petitioner in W.P.(C).34324/2007 is that his liability is only to pay concessional rate of tax and that it has been fully paid to the department. In any case this is a matter for the appellate authority to consider and I am satisfied that the appellate authority has exercised its discretion by granting 50% of the amount.

Therefore I do not find any irregularity in Ext.P4. However 50% tax will be allowed to be remitted in two equal monthly instalments, first instalment shall be payable on the 1st of December, 2007 and the second instalment on 15th of December, 2007.

3. In so far as the appeal filed against the penalty imposed which is the subject matter of W.P.(C). 34318/2007, is concerned, Ext.P4 order granting stay on condition of remittance of 50% needs to be modified. Accordingly 50% of the amount that is directed to be paid by the petitioner, is modified and the petitioner shall remit 25% of the penalty amount and furnish security for the balance amount.

With the above modifications, these writ petitions are disposed of.

ANTONY DOMINIC
Judge

mrcs